No. 90-5721

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

PERVIS TYRONE PAYNE,

Petitioner,

—vs.—

STATE OF TENNESSEE,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF TENNESSEE

BRIEF OF SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the admission of victim worth and victim impact evidence, which necessarily brings into consideration such factors as the race, social status, and other personal characteristics of the victim of a crime, may be properly considered in determining whether to give the offender the death penalty?

INTEREST OF AMICUS CURIAE

The Southern Christian Leadership Conference (SCLC) is a national membership organization founded in 1957 by the Rev. Martin Luther King, Jr., to bring about an end to racial discrimination in American life and obtain full citizenship for African Americans. One of the goals of the SCLC is to secure equal justice for African Americans in the state and federal courts. SCLC has long been active in efforts to see that black victims of crime are treated equally with white victims by police, prosecutors, judges, juries and other actors in the criminal justice system.

SCLC is interested in this case because it believes that distinctions based upon race and class of the victim already play too large a role in determining punishment

in the criminal justice system. Crimes involving black victims are not investigated as thoroughly by police, prosecuted as vigorously by prosecutors, or punished as severely by judges and juries as cases involving white victims.

This problem is particularly pronounced in cases involving the death penalty. Even though black citizens have been the victims in about half of the total number of homicides in this country in the last twenty years, the death penalty is used primarily to punish the murders of white people. Imposition of the death penalty in white victim cases when many other similar or more aggravated cases involving black victims are punished with less severe sentences sends a powerful and unmistakable message to the African American community that black lives are not valued as much by our society as the lives of white citizens.

SCLC believes that overturning Booth v. Maryland, 482 U.S. 496 (1987), and South Carolina v. Gathers, 490 U.S. 805 (1989), would exacerbate these problems and formalize a system of separate and unequal infliction of the death penalty. Accordingly, SCLC submits this brief as amicus curiae to express its concerns and urge this Court to reaffirm Booth. In our multi-racial society, the rule in Booth is constitutionally required to minimize the influence of race and class considerations in the capital sentencing process and to guarantee that all life is given equal protection of the laws.

SUMMARY OF ARGUMENT

Overturning Booth v. Maryland, 482 U.S. 496 (1987), and South Carolina v. Gathers, 490 U.S. 805 (1989), will undermine the Eighth Amendment's most fundamental requirement: that the capital sentencing

decision must be based upon a principled evaluation of the defendant's background and character and the circumstances of the crime guided by objective standards and not upon impermissible or capricious factors. California v. Brown, 479 U.S. 538 (1987); Zant v. Stephens, 462 U.S. 862, 879, 885 (1983); Gregg v. Georgia, 428 U.S. 153 (1976).

Even without the admission of victim worth evidence, the sentencing decision in capital cases is often influenced by the extent to which the lives of prominent, majority race persons are valued by prosecutors and sentencers of the same race and background over the lives of those who are poor and members of minority groups. Overruling Booth and Gathers would increase the role that the color and standing of the victim plays in determining which cases are punishable by death by making such value judgments a

regular and explicit feature of the process.

Admission of victim worth and victim impact evidence will result in a capital sentencing process in which the difference between a sentence of death or life imprisonment may turn on the race and social prominence of the victim and the victim's survivors, the articulateness of the survivors, their willingness to express their emotions in public, and other factors that have little relation to "a reasoned moral response to the defendant's background, character and crime." Penry v. Lynaugh, 492 U.S. ___, 109 S.Ct. 2934, 2951, 106 L.Ed.2d 256, 279 (1989), quoting California v. Brown, 479 U.S. 538, 545 (1987) (emphasis in original).

Overruling Booth and Gathers would not only be inconsistent with this Court's Eighth Amendment decisions; it would be a

retreat from this Court's "unceasing efforts" to eradicate racial prejudice from our criminal justice system. Batson v. Kentucky 476 U.S. 79, 80 (1986).

ARGUMENT

THE RULE IN BOOTH IS REQUIRED TO MINIMIZE THE INFLUENCE OF RACE AND CLASS CONSIDERATIONS IN THE CAPITAL SENTENCING PROCESS AND TO GUARANTEE THAT ALL LIFE IS GIVEN EQUAL PROTECTION OF THE LAWS.

The Court's decisions in Booth v. Maryland, 482 U.S. 496 (1987), and South Carolina v. Gathers, 490 U.S. 805 (1989), follow from the well established Eighth Amendment requirement that the sentencing decision in a capital case be based upon "the character of the individual and the circumstances of the crime" and not upon "factors that are constitutionally irrelevant to the sentencing process" such as race, social status, religion or political

affiliation, Zant v. Stephens, 462 U.S. 862, 879, 885 (1983), and from the requirements of the Eighth and Fourteenth Amendments that capital sentencing procedures may not carry with them an unacceptable risk race influencing the determination of sentence. Turner v. Murray, 476 U.S. 28, 35-36 (1986); Batson v. Kentucky, 476 U.S. 79, 85 (1986).

Overruling Booth and Gathers and allowing victim worth evidence would be inconsistent with these well established principles. The social status and race of the victim would become two of the foremost considerations in determining who dies. The death penalty, already used primarily in white-victim cases, would increasingly become a sanction imposed for the deaths of prominent white persons. Determinations of sentence based upon the characteristics of the victim and the surviving family

members would result in an arbitrariness and capriciousness that is not tolerable under the Court's "insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all." Eddings v. Oklahoma, 455 U.S. 104, 112 (1982).

A. RACE AND CLASS CONSIDERATIONS ALREADY INFLUENCE THE SENTENCING DETERMINATION IN CAPITAL CASES.

The race and prominence of the victim are factors which already lurk dangerously close to the surface in determining whether the death penalty is sought by a prosecutor, whether a plea is offered in exchange for a less severe sentence, and whether a jury imposes a death sentence. Overruling Booth would allow the role that the color and standing of the victim to influence the process beyond constitutionally acceptable limits.

The sentencing decision in a capital case involves "a 'highly subjective, "unique, individualized judgment regarding the punishment that a particular person deserves."'" Turner v. Murray, 476 U.S. at 33-34, quoting Caldwell v. Mississippi, 472 U.S. 320, 340 n. 7 (1985), and Zant v. Stephens, 462 U.S. 862, 900 (1983) (Rehnquist, J., concurring in the judgment). "Because of [this] range of discretion, there is a unique opportunity for racial prejudice" -- including "[m]ore subtle, less conscientiously held racial attitudes" -- to "operate but remain undetected." Turner, 476 U.S. at 35.

Black citizens have been the victims in almost half of the total homicides in this country in the last twenty years.[1]4

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1. U.S. Department of Justice, Sourcebook of Criminal Justice Statistics at 390, table 3.131 (1989). Black persons were the victims in 9,314 murders, 49.1 percent of (continued...)

Nevertheless, the death penalty is inflicted primarily in cases involving white victims. Only 17 of the first 143 executions that have taken place in the nation since Gregg were for murders of black people.[2]4

In the South, which has much of the nation's black population, the patterns are particularly stark. For example, in Alabama, although black citizens were the victims of 65 percent of the murders in 1989, 81 percent of the cases in which death has been imposed have involved mur-

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1. (...continued) the total, in the United States in 1989, the most recent year for which statistics are available. U.S. Department of Justice, Crime in the United States at 10 (Aug. 5, 1990). White persons were the victims in 9,103 murders, 48 percent of the total, that year. Id.

2. NAACP Legal Defense Fund, Death Row U.S.A. at 5-8 (Jan. 21, 1991). In two of those 17 cases, there was also a white victim. Id. at 6-7.

ders of white people.[3] In Georgia, though blacks were the victims of 63.5 percent of the murders between 1976 and 1980, 85 percent of the cases in which death was imposed involved murders of whites.[4] An analysis of 28 studies by the General Accounting Office found that murders of white persons are more likely to be punished by death than murders of black persons.[5]

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3. Alabama Capital Representation Resource Center, Alabama Capital Reporter, Vol. 1, No. 5 at I-34 (July-Aug. 1990).

4. S. Gross & R. Mauro, Death and Discrimination: Racial Disparities in Capital Sentencing 43-44 (1989). In Georgia, those who kill whites are almost ten times as likely to be sentence to death as those who kil blacks; in Florida the ratio is about eight to one, in Illinois six to one, in Mississippi 5.5 to one, and in North Carolina 2the ratio is four to one. Id. at 44, 88-94.

5. The General Accounting Office reported:

(continued...)

The reality behind these disparities is illustrated by the practices in Georgia's Chattahoochee Judicial Circuit, where African Americans are the victims of 63 percent of the homicides but in 78 percent of the capital cases tried in that circuit -- twenty-one of twenty-seven cases -- the victims were white.[6] In a case

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5. (...continued)
In 82 percent of the studies, race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques.

U.S. General Accounting Office, Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities 5 (February 1990).

6. State v. Brooks, Superior Court of Muscogee Co. Nos. 38888 & 54604, Sept. 11-14, 1990 hearing, Defendant's Exhibit 3. Defendant's Exhibits 1A, 3-10. The racial disparities were found for various types of cases, such as those involving other felonies besides murder. For example, the death penalty was sought in 48 percent of

(continued...)

involving the murder of the daughter of a prominent white contractor, the district attorney personally called the contractor and asked him if he wanted the death penalty.[7] When the contractor said yes, the district attorney told him that was all he need to know.[8] He obtained the death penalty and was rewarded with a $5000 contribution from the contractor when he ran for judge in the next election.[9]

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6. (...continued)
the cases involving murders of white females, but only 9.4 percent of the cases involving murders of black females. Id., Transcript of Sept. 11, 1990 hearing at 130.

7.
Davis v. Kemp, Super. Ct. of Butts Co., Ga. No. 86-V-865, Transcript of Hearing of Oct. 21, 1988, at 38; Claybrook, Slain's girl's father top campaign contributor, Columbus (Ga.) Ledger-Enquirer, Aug. 7, 1988, § B, at B-1 col. 3, B-10.

8.
Davis v. Kemp, supra n. 7, Transcript at 38; Claybrook, supra n. 7, at B-10.

9.

(continu

In another white victim case, the prosecutor called a press conference after meeting with the victim's family, and said that based upon his meeting with the family, he had decided to pursue the death penalty.[10] The views of surviving relatives were solicited in other white victim cases and the families were kept informed of the development of the cases.[11]

The families of black victims in the Chattahoochee Circuit do not get this treatment; indeed, they get no treatment at all. They are not asked by the

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9. (...continued)
Davis v. Kemp, supra n. 7, Transcript at 38-39; Claybrook, supra n. 7, at B-1, B-10. The contractor also contributed $3,000 to the campaign of the assistant district attorney who handled the case to become district attorney. Id.

10.
State v. Brooks, supra n. 6, Transcript of Sept. 12, 1990 hearing at 155-156; Defendant's Exhibit 41.

11.
State v. Brooks, supra n. 6, Transcript of Sept. 12, 1990 hearing at 67-69, 152-153.

district attorney what sentence they want or even kept informed of developments in the cases.[12] They usually hear about the disposition of cases involving the murder of their loved ones from friends or in the media.[13] Not surprisingly, a survey by the local newspaper found that "large numbers of the city's black residents feel that blacks do not receive the same treatment as whites in the criminal justice system.

12.
State v. Brooks, supra n. 6, Transcript of Sept. 12, 1990 hearing at 177-178, 184-185, 199-200, 203, 205-207, 212-213, 221-222, 227-229.

13.
See, e.g., State v. Brooks, supra n. 6, Transcript of Sept. 12, 1990 hearing at 177-78 (father of murdered son learned "from the street" of arrest and that the "guy who actually did the killing got 25 years, but I don't know if that's true or not"); 200 (mother of murdered daughter working in yard when she heard surviving daughter screaming that she had heard about disposition of case on television); 206 (mother of murdered daughter felt "like I should've been contacted about my daughter, and it hurts real bad. Nobody have contacted me about her at all.")

This belief . . . comes up any time a black defendant receives the death penalty."[14] This recognition that crimes against black citizens are not treated equally with crimes against whites is found in black communities throughout the nation.[15]

That view was reinforced recently in another white victim case in the Chattahoochee Circuit in which it appeared

14.
Winn, Racism concern is nothing new in Columbus, Columbus Ledger-Enquirer, Aug. 14, 1988, § B at B-11.

15.
See, e.g., Davis, Law as Microaggression, 98 Yale L. Jou. 1559, 1559 n. 1 (1989) (citing one national study conducted in 1988 showing that 61 percent of black citizens believe that minorities do not receive equal treatment in the criminal justice system and other national and local surveys showing that blacks believe they are not treated as well as whites in the courts); see also Coady, When Life is Cheap, The Atlanta Constitution, Feb. 16, 1991 at B1, B10 (Mothers of Murdered Sons organized by black families and ministers in Atlanta because lack of attentiveness to black victimization by "Georgia's predominantly white judicial system").

that the death penalty was imposed on the black defendant not so much because of the crime -- a convenience store robbery and murder which tragically is all too common -- but the prominence of the victim's father, the commander of the Infantry Training Center at the Fort Benning Army base.[16]

Black victims are treated differently than whites in the Chattahoochee Judicial Circuit and elsewhere because of the absence of black citizens in the process and because of the "familiar psychological tendency [of] predominantly white decision makers . . . to sympathize more with whites than blacks."[17] This tendency was

16. Walsh, Walker gets death sentence for 1988 store clerk slaying, Columbus Ledger-Enquirer, Feb. 11, 1991, § A, at A-1.

17. Pillsbury, Emotional Justice: Moralizing the Passions of Criminal Punishment, 74 Cornell L. Rev. 655, 708 (1989); see also (continued...)

stated bluntly by a Texas judge: "'When a white is killed, the whites are upset. When a black is killed, the blacks are upset.'"[18] However, black citizens have limited opportunity to express their outrage through the criminal justice system as judges, prosecutors or jurors. Quite often, they have no opportunity at all.

For example, although twenty-seven percent of Georgia's population is black, all 45 elected district attorneys are

17. (...continued) Carter, When Victims Happen to Be Black, 97 Yale L.J. 420 (1988); Dane & Wrightsman, Effects of Defendants' and Victims' Characteristics on Jurors' Verdicts, in The Psychology of the Courtroom 104-06 (1982). The effect is particularly pronounced and result in the most severe sentences where the victim is of the same race, and the defendant is of a different race, from that of the jurors. Id. at 106.

18. Belkin, Texas Judge Eases Sentences for Killer of 2 Homosexuals, N. Y. Times, Dec. 17, 1988, § 1, at 8, col. 5.

white and only six of the state's 138 Superior Court judges are black.[19] There is a similar absence of black citizens in the official positions in the court systems in other states.[20]

Thus, the decision to seek death or to resolve cases with a plea bargain to a sentence less than death is frequently made by officials who may not be as sensitive to loss of life in the black community as in their own communities. In one judicial circuit in Georgia, for example, those decisions are made by a

19. Joint Center for Political Studies, Black Elected Officials: A National Roster at 127, 142 (1989).

20. Sherman, Is Mississippi Turning, The National Law Journal, Feb. 20, 1989, at 1, 24-25 (only one black judge among 38 circuit court judges and none among 40 chancery court judges in Mississippi; only four black judges among 125 on circuit courts in Alabama; only five black judges among the 178 on the district courts in Louisiana).

district attorney who has remained in office even after it was discovered that he had secretly directed jury commissioners to underrepresent black citizens on the lists from which grand and petit jurors were drawn.[21] That district attorney, who has prosecuted almost 30 capital cases, has used 94 percent of his strikes against blacks in cases involving a white victim and a black defendant.[22]

Because of such practices and the relatively small number of blacks in the population, black citizens have little opportunity to participate as jurors. The district attorney in Jackson, Mississippi, has stated that his strategy for jury selection in a capital case is to "get rid

21. Amadeo v. Zant, 486 U.S. 214, 217 (1988).

22. Horton v. Zant, 11th Cir. No. 90-8522, Petitioner's Exhibit 10 (96 strikes used against black jurors and only six against white jurors).

of as many" blacks as possible with his peremptory strikes.[23] In Chambers County, Alabama, where official marriage records are still kept separately at the courthouse in books engraved with the words "white" and "colored,"[24] the district attorney has divided prospective jurors into four lists -- "strong," "medium," "weak" and "black" -- and then used all 23 of his peremptory challenges to eliminate the 23 black venirepersons from service in a capital case involving a white victim and black defendant.[25]

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23. Edwards v. Scroggy, 849 F.2d 204, 207 (5th Cir. 1988)

24. State v. Jefferson, Circuit Court of Chambers County, Alabama, No. CC-81-77, Petitioner's Postconviction Hearing Exhibit 7 (January 25, 1989).

25. Id., Petitioner's Postconviction Exhibit 3.

Despite the Court's decision in Batson v.Kentucky, such a strategy continues to be effective in limiting black participation in the process. In Georgia's Chattahoochee Judicial Circuit, it was recently shown that the local Superior Court judges have yet to find a single reason given by a prosecutor for striking a black juror in any criminal case inadequate under Batson.[26] See also Johnson, Unconscious Racism and the Criminal Law, 73 Cornell L. Rev. 1016, 1023-1024 (1988).

The predominantly white juries selected -- whether because of these practices or because of a low percentage of blacks in the population -- often bring with them to the jury box, either consciously or unconsciously, "racial stereotypes and assump-

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26. State v. Bailey, Super. Ct. Muscogee County, Ga., No. SU-90-CR-000744, Affidavits of Michael E. Garner, Robert G. Jones, II, Andrew C. Dodgen filed May 30, 1990.

tions" which influence them "in the direction of findings of black culpability and white victimization, . . . black immorality and white virtue, . . . blacks as social problems and whites as valued citizens."[27] See, e.g., Dobbs v. Zant, 720 F. Supp. 1566, 1576-1578, 1576 n. 22 (N.D. Ga. 1989) (many white jurors who sentenced black man to death for murder of white victim demonstrated an "insensitivity to racial matters" and felt "races should mix to a limited extent only;" two jurors found blacks "scarier than whites" and two jurors admitted to using the slur "nigger").

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27. Davis, supra n. 15, 98 Yale L. Jou. at 1571. See also Johnson, Unconscious Racism and the Criminal Law, 73 Cornell L. Rev. 1016, 1020 n. 27 (1988) (describing persons in our society who "maintain a distance" between themselves and minorities and as a result are "less likely to feel empathy for minorities due to this distance.")

Questioning on voir dire may result in candid disclosures by some jurors of beliefs that "blacks are violence-prone or morally inferior" or "[f]ears of blacks," Turner v. Murray, 476 U.S. at 35, but will seldom uncover the extent to which the juror identifies with members of his own race over another race.[28]

These factors have contributed to the remarkable disparity between imposition of the death penalty for murders of white and blacks. While the disparities standing alone may not be sufficient proof to establish a constitutional violation in a particular case, McCleskey v. Kemp, 481 U.S. 279 (1987), they nevertheless signal

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28. Nor will it identify one who "claims to accept egalitarian norms and behaves consistently with those norms in most situations[,]" but "reverts to traditional patterns of racial discrimination" when anger is aroused such as in white-victim cases. Johnson, supra n. 27, 73 Cornell L. Rev. at 1020 n. 27.

the very clear and present danger of these invidious factors influencing whether a crime will be punished by death.[29] They also underscore the constitutional necessity of the Court maintaining its "unceasing efforts" to eradicate racial prejudice from the process by requiring procedures which minimize the risk of race influenc-

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29. The magnitude of the danger is also indicated by the fact that four members of the Court concluded in McCleskey that race was playing an impermissible role in the process. Id. at 325 (Brennan, J., dissenting) ("the risk that race influenced McCleskey's sentence is intolerable by any imaginable standard"); 359 (Blackmun, J., dissenting) ("McCleskey's showing is of sufficient magnitude that, absent evidence to the contrary, one must conclude that racial factors entered into the decisionmaking process that yielded McCleskey's death sentence"); 366 (Stevens, J., dissenting) (observing "strong probability" that sentencing decision was influenced by race and that the "same outrage would not have been generated if he had killed a member of his own race.") Justice Marshall joined the dissents of Justice Brennan and Justice Blackmun.

ing the sentencing decision. Batson v. Kentucky, 476 U.S. at 80.

B. ADMISSION OF VICTIM WORTH EVIDENCE WOULD INCREASE THE INFLUENCE OF RACE AND STATUS ON THE SENTENCING DECISION

The admission of victim worth evidence would exacerbate the problem of race and socioeconomic status influencing the sentencing decision. Upon consideration of victim impact evidence, a jury would be authorized and encouraged to reject the death penalty for an aggravated murder involving a poor, unemployed -- often minority -- person but impose it in a less aggravated case of a prominent white person.

Prosecutors and juries could validly take into account the social and political standing of a victim of the crime in deciding whether to seek and impose the death penalty. See, e.g., Morris v.

Commonwealth, 766 S.W.2d 58, 61 (Ky. 1989) (prosecution brought out that victim's father and brother were both prosecutors); Vela v. Estelle, 708 F.2d 954, 962, 965, 966 (5th Cir. 1983) (prosecution presented the testimony of a "well-known professional football player" that victim was a star athlete and usher and choir member at his church to "encourage by jury to set punishment based on the goodness of the murder victim"), cert. denied, 464 U.S. 1053 (1984).

Prosecutors and juries would also be authorized to find that the lives of homeless people, prostitutes, the politically unpopular, or others who are differennt are not "worth" as much as other members of society. See, e.g., Belkin, Texas Judge Eases Sentence for Killer of 2 Homosexuals, N.Y. Times, Dec. 17, 1988, at § 1, at 8, col. 5 (thirty-year sentence for murders of two homosexuals explained

by: "I put prostitutes and gays at about the same level. And I'd be hard put to give somebody life for killing a prostitute.")[30]

These concerns are not based on speculation, but on the cold hard reality that racial and class bias have not been eradicated from either American society or the criminal justice system. Overruling Booth would remove a significant protection against racial discrimination and allow race and social standing to play a greater and more explicit role in deciding who is sentenced to death. Such an outcome would be a major step backward toward an earlier time in our history when crimes were punished differently based

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30. See Brief Amici Curiae of Murder Victims' Families for Reconciliation, Ohio v. Huertas, No. 89-1944 at 32-36.

upon race of the victim[31] and contrary to the purpose of the equal protection clause to protect equally the lives of all citizens.[32]

Imposition of the death penalty based on ad hoc, subjective assessments of an individual's personal worth or the impact of the loss on a family is much different than the use of capital punishment to protect governmental functions and personnel, such as police officers and court officials,[33] or classes of persons with unique vulnerabilities, such as children and the elderly.

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31. See McCleskey v. Kemp, at 329-331 (Brennan, J., dissenting).

32. For a discussion of the intent and purpose of the equal protection clause see Brief Amicus Curiae of the NAACP Legal Defense and Educational Fund, filed in South Carolina v. Gathers, 490 U.S. 805 (1989).

33. See e.g., 18 U.S.C. §§ 351, 1111, 1751.

Providing for the death penalty in these latter situations comes well within the legislature's prerogative to carry out government functions and adopt objective classifications to protect its citizens. But no legislature has attempted to authorize the death penalty for the murders of "exemplary" citizens such as executives in large corporations, those in certain income brackets or people who are active in their churches.

Similarly, while legislatures may provide for different punishments depending on the result -- for example, whether a pedestrian was killed or the intersection was empty when a drunk driver went through a stoplight[34] or whether a gun

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34. Booth v. Maryland, 482 U.S. at 516 (White, J., dissenting), see also id., at 519 (Scalia, J., dissenting).

aimed at a guard fires or misfires[35] - - those distinctions do not turn on the worth and status of the victim involved. It is the loss of life when the car went through the stoplight or the gun was fired that should determine the enhanced punishment, not whether the victim was white or black, prosperous or poor, well respected or generally disliked, religious or not religious, single or a parent of four.

As Justice Powell wrote for the Court in Booth: "We are troubled by the implication that defendants whose victims are assets to the community are more deserving of punishment than those whose victims are perceived to be less worthy. Of course, our system does not tolerate such distinctions." Booth v. Maryland,

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35. Id., 482 U.S. at 519 (Scalia, J., dissenting).

482 U.S. at 506 n. 8. So long as the system rests on the fundamental premise of political equality for all, that intolerance should be maintained.

CONCLUSION

Because Booth and Gathers are indispensable to minimizing the risk of racial and class influence on the capital sentencing process and providing equal protection for all life, those decisions should be reaffirmed.

Respectfully submitted,

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